ABSTRACT

The concept of a cross-offer, a complex aspect of contract law, arises when two parties simultaneously make identical or substantially similar offers to each other, ordinarily without knowledge of the other's offer. This issue challenges the traditional principles of offer and acceptance, which require a clear offer followed by an unequivocal acceptance to form a binding contract. Cross-offers raise critical questions about mutual assent and the formation of a contract, as neither party's offer can be deemed an acceptance of the other. This paper comprehensively explores the concept of cross-offers through the lens of decided cases, analyzing their legal implications, judicial interpretations, and practical significance in contract law. By examining landmark cases such as ***Tinn v. Hoffman (1873)***, ***Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas and Co. (1966) AIR 1966 SC 543***, and other relevant authorities, the discussion explains how courts determine whether cross-offers can result in a binding agreement.

Furthermore, this paper differentiates between cross-offers from counter-offers, while a counter-offer constitutes a rejection and a new offer, a cross-offer occurs in the absence of communication or knowledge of the other's intention. The discussion outlines the legal consequences of each and explores how they affect enforceability and the timeline of contractual negotiations. By exploring judicial reasoning, doctrinal critiques, and practical applications, this paper aims to clarify the legal position of cross-offers and their limited role in creating binding contractual obligations. It also considers implications for modern contract formation, especially in the context of electronic communications and automated negotiations, where simultaneous or non-sequential exchanges are increasingly common.

1.0. INTRODUCTION

Contracts play a veritably important part in our everyday life. A contract is defined as an agreement which the law will enforce or recognize as affecting the legal rights and duties of the parties or as an agreement, enforceable by the law between two or more persons to do or abstain from doing some act or act. To constitute a binding contract between parties, there must be a meeting of minds often referred to as ***consensus ad idem***. In the case of ***B.F.I. GROUP v. BUREAU OF PUBLIC ENTERPRISES (2008) All FWLR (Pt. 407) 1087 at 1110, the Court of Appeal (Abuja Division)*** provided a comprehensive definition of a contract. The court stated;

"A contract is an agreement between two or more parties which creates reciprocal legal obligation or obligations to do or not to do a particular thing. For a valid contract to be formed, there must be mutuality of purpose and intention. The two or more minds must meet at the same point, event or incidents. They must be saying the same thing at the same time. They must not be saying different things at different times. Where or when they say a different thing at different times, they are not id idem and therefore no valid contract is formed. The meeting of minds of the contracting parties is the most crucial and overriding factor or determinant in the law of contract. An agreement will not be binding on the parties to it until their minds are at one both upon matters which are cardinal to the species of agreement in question and also upon matters that are part of the particular bargain"

The elements of a valid contract are offer, acceptance, consideration and the intention to enter into legal relations. An **Offer** may be defined as a definite undertaking or promise, made by one party with the intention that it shall become binding on the party making it, as soon as it is accepted by the party to whom it is addressed. According to the case of ***Sunday Akanmu v. Oluwole Olugbode,*** the Court of Appeal, defined an offer from another angle thus:

> "An offer is an expression to contract on certain terms by a person by whom it is made with the intention that it shall become binding as soon as it is accepted by the party to whom it is addressed . Once the offer is unconditionally accepted, a valid binding contract has come into existence ".

An **Acceptance** has been defined by Tobi, J.C.A. in the case of ***Oriente Bank (Nig.) plc. v. Bilante International Ltd.*** as "*the reciprocal act or action of the offeree to the offer in which he indicates his agreement to the terms of the offer as conveyed to him by the offeror.* **Consideration** is something of value exchanged between the parties to a contract. Consideration can be many things such as money, property, service, work performance, or a promise to not do something. As long as the parties to the contract exchange something of value between each other, there is consideration. Classic definition comes from Sir Frederick Pollock, adopted in the case of ***Currie v. Misa (1875) LR 10 Ex 153***, where the court said: "Consideration is some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other." The last element is the **Intention to enter into legal relations**. The intention to create legal

relations means both parties to an agreement must have intended for their agreement to be legally binding, with the understanding that it could be enforced by law.

2.0. CROSS-OFFER AS AN INVALID FORM OF ACCEPTANCE

An Acceptance has been established to mean a final and unqualified expression of assent to the terms of the offer. In the case of ***Felthouse v. Bindley(1862)*** and ***Major-General George Innih (RTD) & Ors v. Ferado Agro and Consortium Ltd,*** a valid acceptance is defined as one that is expressly communicated as an assent to the terms of the offer, as proposed by the offeror. An acceptance is ineffective unless there is a complete agreement on all material contract terms. There are several situations in which there is apparent acceptance of an offer, but which in fact turns out for different reasons to be invalid and ineffective. It will be a necessity for us to briefly discuss some other forms of an Invalid Acceptance before we discuss in detail our major concern in this work, which is the Cross-offer.

- **Counter-offer**: For acceptance to be valid, there must be unequivocal assent to the terms of an offer. Where an alteration has been made to the terms of an offer by the offeree, acceptance of such is referred to as a counter-offer. Due to moderation of the terms of the offer, an entirely new offer has been created which is distinct and separate from the original offer. The counter-offer is well illustrated by the case of ***Dalek Nig. v. OMPADEC,*** where the court of appeal held that, " *it is a counter-offer which is not only an acceptance of the offer but amounts to a rejection of the original offer, with the result that if the original offer is subsequently accepted, its acceptance does not result in a contract between the parties"*
- **Conditional acceptance or acceptance "subject to contract" and a " provisional" acceptance:** Conditional acceptance is not a valid or binding acceptance. Any acceptance that is made subject to a condition cannot create a binding contract until such condition has been met or fulfilled. An example of such acceptance is "subject to contract" which is not valid until a contract is formed. In the case of ***Winn v. Bull***, the defendant agreed to take a lease of a house "subject to the preparation and approval of a formal contract". The Court held that, in the absence of a formal contract, the agreement was not binding. A provisional agreement has the opposite effect of an agreement made subject to contract in that it is binding on the parties to it. This led to the judgement in Att. Gen. of Federation V. Awojoodu where the contract was held to be binding because of the use of the term "provisional". For the purpose of justice, provisional acceptance can only be decided based on the context of its use.

- **Acceptance in ignorance of offer**: It is a settled position of the law that a person cannot accept an offer that he/she is unaware of. This invalid form of acceptance is common with unilateral contracts such as reward cases where someone does something unaware of the reward and then tries to claim the reward later on. There are contradictory judgments on this because in ***Gibbons V. Proctor***, it was held that it is possible to accept an offer in ignorance of it. However in ***Fitch V. Snedaker,*** it was held that a reward cannot be claimed by one who did not know that it had been offered. Also in R. V. Clarke it was held that a person cannot accept a reward offer if the reward was not the motive of their actions. However, the decision in ***Williams V. Cowardine*** shows that knowledge of the offer renders the motive of the action irrelevant.

- **Cross-offer**

A cross offer occurs when two parties make identical offers to each other in ignorance of the other's offer. The offers made by the two parties are usually identical in terms, such as price, quantity, obligations and conditions and are usually made in total unawareness of each other's action for a cross offer to occur. The two parties send each other this offer by post or other means and the offer 'cross' in the post or *en route*. Cross offer therefore means a situation in contract law that occurs when two parties make offers that are identical in terms and send them to each other in ignorance of the other's offer.

Cross-offers are invalid forms of acceptance because:

- No party is aware of the other's offer at the time of making theirs
- There is no communication of acceptance
- The sequence required for mutual assent is missing

Imagine

- Student A in UI offers to sell a hair product for ₦2000 via WhatsApp.
- Student B, unaware of this, also sends a message offering to buy the same product for ₦2000.
- Due to network delay, both offer cross paths.
-Legal Outcome: No contract is formed. Though the offers match, neither party accepted the other's offer; they were merely proposals sent independently.

Another instance is that, supposing A who has been negotiating with B to buy B's land for some time, writes to B, offering to buy the land for #200,000, and B, independently and in ignorance of A's intentions writes to B offering to his land to B for #200,000, both letters

cross in the post. The question here now is that, is there a contract for the sale of B's land to A for #200,000? The answer is “NO”. All we have are just two identical offers, and no acceptance. For a contract to emerge, there must be an offer by one party to the other, and the other consenting to the offers , indicates his acceptance of it. The critical issue is whether cross-offers, which demonstrate a mutual intention to contract on similar terms, can result in a binding agreement. The resolution of this question hinges on the principles of mutual assent and the "meeting of minds" (consensus ad idem), a cornerstone of contract law. We shall explore a landmark case that has evolved over time on the concept of cross-offer.

3.0. LEGAL PRINCIPLES AND CASE EVALUATION ON CROSS-OFFER

The formation of a contract under common law requires an offer, acceptance, consideration, and an intention to create legal relations. In the case of cross-offers, the simultaneous nature of the offers means that neither party has had the opportunity to accept the other’s offer at the time the offers are made. This raises the question of whether the mutual expression of intent through identical offers can substitute for the traditional offer-acceptance sequence. Courts have consistently held that cross-offers do not automatically result in a binding contract unless there is a subsequent act of acceptance or conduct that demonstrates agreement. This principle ensures that the parties’ intentions are aligned and that a contract is not imposed without clear mutual assent. A prominent case that explains cross-offer is the case of ***Tinn v. Hoffman & Co. (1873).***

Facts

In that case, the defendant, Mr Hoffman wrote to the plaintiff, Mr Tinn, on November 28, 1871 with an offer to sell him 800 tons of iron for the price of 69s per ton. He requested a reply to this offer by post. On the same day, without knowing of this offer, Mr Tin also wrote to Mr Hoffman offering to buy 800 tons of iron at 69s per tons. The plaintiff contended that there was a contract for 800 tons at 69s per ton.

Issues

The issue in this case was whether there was a valid contract between Mr Tinn and Mr Hoffman for the sale of the iron. There was also the issue of if acceptance had to be by post for it to be valid, as this was specified in the offer.

Decision and Outcome

It was held in this case that there was no contract between Mr Tinn and Mr Hoffman for the iron. The cross offers were made simultaneously and without knowledge of one another; this was not a contract that would bind the parties for the iron. There is a difference between a

cross offer and a counter offer. In order to form a valid contract, there must be communication that consists of an offer and acceptance. There was no acceptance by post, as had been stated in the offer. The court also said that while post had been indicated in the offer, another equally fast method would have been successful, such as a telegram or verbal message.

From the above case, we can see that there was no contract. What existed was merely two simultaneous offers. The court's position was aligned with the essentials of a valid contract, and that being, that an offer must be unambiguous and certain in nature and that every valid contract requires a properly communicated agreement or assent that is known to all parties involved in the specific contract. To this effect, the court invalidated the contract.

The concept of cross offers was further explained in the case of ***Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas and Co. (1966) AIR 1966 SC 543***. In this case, the plaintiff and the defendant exchanged several letters negotiating the sale of certain goods. The plaintiff offered to sell the goods to the defendant, and the defendant made a counteroffer to buy the same goods at a lower price. The plaintiff did not accept the defendant's offer, and the defendant did not accept the plaintiff's offer. The court held that there was no contract as both parties had made cross offers, and neither offer was accepted. Likewise, In the Indian case of ***Lalman Shukla v. Gauri Dutt (1913),*** the court held that a cross-offer does not result in a valid contract because neither party has accepted the other's offer.

4.0. CROSS-OFFER AND COUNTER-OFFER

Cross-offer and Counter-offer are both types of an Invalid form of acceptance. While a cross-offer refers to a situation where two parties simultaneously make identical offers to each other, a counter-offer is a response made by one party to an initial offer by the other party that changes the terms of the original offer. A cross-offer occurs when two parties make identical offers to each other, without either party knowing about the other's offer as seen in the case of ***Tinn v. Hoffman***. In such a situation, there is no acceptance because both parties are making offers at the same time, and neither party has had the opportunity to accept or reject the other's offer. This is because acceptance requires an unequivocal expression of agreement to the terms of the offer. In a cross-offer situation, there is no such clear agreement because both parties are simultaneously making identical offers to each other.

On the other hand, a counter-offer is a response made by one party to an initial offer made by the other party that changes the terms of the original offer. In other words, it is a rejection of

the initial offer and a simultaneous making of a new offer as revealed in the case of ***Hyde v Wrench (1840).*** The difference between a cross-offer and a counter-offer lies in the fact that in a cross-offer, there is no acceptance. In contrast, in a counter-offer, there is a rejection of the initial offer and a simultaneous making of a new offer.

5.0. MODERN APPLICATION AND CHALLENGES OF CROSS-OFFER

The idea of a cross-offer, where two parties simultaneously make identical or substantially similar offers to each other without knowledge of the other's offer, remains relevant in modern commercial and digital contexts. As communication technologies and global trade evolve, cross-offers present both new applications and unique challenges. These applications and their setbacks will be explored subsequently.

5.0.0.Modern Applications of Cross-offer

One of the modern applications of cross-offer is the e-commerce platforms and online market places. Cross-offers can occur when buyers and sellers simultaneously submit identical bids or offers. For instance, a buyer may place an offer to purchase an item at a specific price at the same moment the seller confirms availability or proposes the same price.

Cross-Border Transactions and Global trade is another modern application of cross-offer. In international commerce, cross-offers can occur due to simultaneous communications across time zones, especially in industries like commodities trading or shipping. For instance, two companies in different countries might email identical offers to buy or sell goods at the same price, unaware of the other's proposal due to delays in communication or time zone differences.

Modern application of the concept cross-offer can also feature in Instant messaging and real-time negotiations. With the rise of instant messaging platforms like WhatsApp, Slack, or email, cross-offers can occur in real-time negotiations where parties send offers at the same time. This is common in business-to-business (B2B) deals or freelance negotiations. For instance, two freelancers might at the same time, propose the same fee for a project via email, unaware of the other's offer. Clear follow-up communication is needed to confirm agreement.

5.0.1 Challenges of Cross-offer in Modern Context

The modern application of cross-offer poses some challenges. One of these challenges is **Ambiguity in Contract Formation.** The core challenge of cross-offers, as established in

Tinn v. Hoffman (1873) 29 LT 271, is that they do not automatically form a contract because neither offer constitutes an acceptance. In modern contexts, this can create ambiguity, especially in fast-paced digital transactions where parties expect immediate results. To address this, Platforms must implement clear rules for offer matching and acceptance, such as automated confirmation emails or system-generated contract agreements.

Another challenge is **Consumer Expectations and Trust.** In consumer transactions, cross-offers can create confusion if platforms fail to clarify contract formation. Consumers may assume a contract exists based on identical offers, leading to disputes if the seller does not proceed. This can erode trust in online marketing platforms, as consumers may feel misled if transactions fail due to cross-offer issues. This can be mitigated through Platforms' provision of clear, user-friendly notifications of order confirmation and acceptance to align with consumer expectations. **Time Zone and Communication Delays is another issue.** In global transactions, time zone differences and communication delays can exacerbate cross-offer issues. For instance, emails sent simultaneously from different continents may not be received at the same time, complicating the determination of offer and acceptance. This can lead to disputes over whether an offer was accepted or if a contract exists, particularly in industries like shipping or commodities trading where timing is critical. To overcome this, Parties should use real-time communication platforms or centralized trade systems that log offers with precise timestamps to avoid confusion.

6.0. CONCLUSION

Clear communication is essential in contract law, as it ensures that all parties understand and agree to the terms of a legally binding agreement. Without it, the risk of disputes, misunderstandings, and unenforceable contracts increases significantly. The concept of cross-offers foregrounds the complexities of contract formation when traditional offer-acceptance principles are disrupted. Cross-offers, though seemingly mutual, do not constitute a legally binding agreement. Their failure lies in the absence of an express and communicated acceptance, which is a non-negotiable requirement for contract formation. Both Nigerian and English jurisprudence emphasize that without ***consensus ad idem***, there can be no contract. Therefore, cross-offers serve as academic examples of what a contract is not, despite appearing on the surface to show agreement. The decision in ***Tinn v. Hoffman*** remains the cornerstone of judicial reasoning, emphasizing that cross-offers do not inherently create a binding contract without a subsequent act of acceptance. As communication technologies evolve, the principles governing cross-offers will continue to be tested,

requiring courts to balance formal legal requirements with practical considerations of intent and conduct.